

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

LIBERTE CAPITAL GROUP,

Plaintiff,

Case No. 5:99 CV 818

-vs-

O R D E R

JAMES A. CAPWILL, et al.,

Defendant.

KATZ, J.

This matter is before the Court on the Receiver's motion to strike the intervening complaint by C.M. Life Insurance Company (Doc. No. 2459), a memorandum in opposition (Doc. No. 2463) and reply (Doc. No. 2464) thereto. Also before the Court is the Receiver's motion to extend time to file its answer (Doc. No. 2478). This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

The essence of the Receiver's dispute centers on a lack of a motion to intervene by the insurer and a court ruling thereon before the complaint may be filed. Counsel for the insurer avers that the Court, in *Wuliger v. C.M. Life Insurance*, Case No. 1:05 CV 2717, waived the process for seeking intervention allowing the insurer to file its complaint in this main litigation. However, the standing orders governing both Receiverships maintain the following:

It is further ORDERED that all creditors, claimants, bodies politic, parties in interest, and all sheriffs, marshals, and other officers, and their respective attorneys, servants, agents, and employees, and all other persons firms and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceedings in equity to foreclose any lien or enforce any claim against said Alpha Capital Group, LLC, its property or against the Alpha Receiver in any court. Such entities are further stayed from executing or issuing or causing the execution or issuance out of any

Court of any writ, process, summons, attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon, any property owned by or in the possession of the said Receiver, and from doing any act or thing whatsoever to interfere with the Receiver in the discharge of his duties in this proceeding with the exclusive jurisdiction of this Court over said properties and said [] Receiver.

(Doc. Nos. 132 and 1416). It is upon these standing orders that a claimant, such as the insurer herein, must seek leave of court before pursuing its claim. In the interests of allowing due process to both sides of this dispute, the Court will order the following:

The complaint filed by C.M. Life Insurance Company (Doc. No. 2457) shall be designated as a proposed complaint. The Clerk is directed to make this correction to the docket. C.M. Life Insurance Company is granted thirty (30) days to file a motion to intervene as related to its proposed complaint with the Receiver and Class Counsel for Alpha granted three (3) weeks for response and the insurer is granted ten (10) days for reply.

The Receiver's motion to strike (Doc. No. 2459) and his motion for extension (Doc. No. 2478) are denied as moot.

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE